Historically, Europe has been immune from US-style class action litigation, but recent legislative acts and policy pronouncements by European lawmakers, cases involving US and European parties and counsel, and the migration of leading US plaintiffs’ firms to Europe suggest a new synergy is emerging between European and US class action litigation. These developments indicate companies should take a holistic, multinational approach to mitigating risk and to formulating legal-defense strategies.

**Recent Policy Statements and Legislation**

- One reason class actions have not yet emerged in Europe is that damages in European litigation generally are compensatory, without large punitive elements. That may be changing, however. In December 2005, the Commission of the European Communities presented its *Green Paper*, proposing several methods to calculate damages awards in antitrust cases, including “double damages.” In March 2007, the European Commissioner for Consumers issued the *Consumer Policy Strategy*, which built on the *Green Paper*’s increased-damages proposals, adding a collective-litigation element for consumer cases. Several European Union member states have put these proposals into action, setting a trend toward class or collective actions in Europe.

  - Italy has most recently adopted class litigation. A new law scheduled to take effect on January 1, 2009, permits collective actions — *azione collettiva risarcitoria* — in Italian courts. In a significant departure from previous law, the new law empowers consumer groups and court-approved plaintiff classes to sue on behalf of injured persons under a number of legal theories including antitrust, breach of contract, tort and unfair competition.

  - In Germany, the Bundestag will consider renewing the Capital Markets Model Case Act (*KapMuG*), which provides for collective litigation in securities cases and which is set to expire in November 2010. Germany originally enacted the Model Case Act in November 2005 in order to manage mass securities litigation by permitting the Higher Regional Court to stay related cases pending in other courts and decide common questions of fact or law for one case — a model case — which then would be binding on the other cases. In February 2007, the Stuttgart Court of Appeals dismissed the first-ever model case when it rejected an investors’ claims that the company had not informed them properly of a board of management member’s resignation. The decision is on appeal to Germany’s supreme court.

  - Germany also is experimenting with contingency-based attorney fees. In March 2007, Germany’s supreme court struck down Germany’s prohibition on contingency fees in cases where a client would not otherwise be able to enforce his rights. In mid-2008, the Bundestag began debating a bill to permit contingency fees in such circumstances. Whether contingency fees will lead to a rise in multiplaintiff litigation in Germany, as they have in the United States, is an issue European lawmakers likely will follow in the months ahead.

  - Other member states with substantive group-litigation legislation include Austria, Czech Republic, Hungary and Spain. In addition, England and Wales and Sweden have procedural rules permitting courts to manage multiplaintiff cases centrally. Other member states are considering introducing multiplaintiff procedures in their courts, which may impose burdens similar to those US businesses have experienced with class action litigation in the United States.
Increased Activity in Europe by US-Based Plaintiffs’ Firms

- Plaintiffs’ firms based in the US have been increasingly active in Europe.
  - US-based firms have announced interest in pursuing collective antitrust, products liability, securities and shareholder derivative litigation in a number of European jurisdictions. In September 2006, one Philadelphia-based plaintiffs’ firm announced a “strategic partnership” with a Frankfurt firm; and in April 2007, a firm based in Washington, DC, opened an office in London.
  - In April 2007, three US plaintiffs’ firms spearheaded a $400 million settlement with Royal Dutch Shell on behalf of a class of European investors. Plaintiffs had filed the class action underlying the Shell settlement in the United States, but the European investors had opted out of that class. Shell and the European investors structured their settlement under a new Dutch law permitting a special-purpose representative entity to settle claims on collective terms on behalf of plaintiffs.

Expected Developments

- In the near term, plaintiffs will continue to sue in the United States in order to take advantage of contingency fees, punitive damages, jury trials and no-fee shifting.
- But the European Commission’s continuing efforts to create a single market, together with new member state laws and procedures for multiplaintiff litigation, will lead to increased class litigation in Europe, especially in the antitrust, consumer protection and securities areas.